

National Telecommunications and Information Administration

U.S. Department of Commerce

1401 Constitution Avenue NW, Room 4725
Washington, DC 20230

Attn: Fiona Alexander

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Mr. David J. Redl, Assistant Secretary for Communications and Information

Re: Notice of Inquiry, Docket No 180124068-8068-01, International internet Policy Priorities

The Internet Infrastructure Coalition (i2Coalition) is composed of a diverse group of Internet infrastructure companies that help enable key technology solutions. The i2Coalition supports businesses that facilitate the operation of the Internet between transmission and delivery of content layers, including web hosting, cloud infrastructure, and data centers. These Internet infrastructure providers are a vital economic engine in the U.S. They build the framework of the Internet upon which the entire digital economy rests. We are made up of enterprises from various areas of the industry and the world. Because the nature of our work is global and dependent upon a free, open, multi-stakeholder model of Internet governance, we offer our input into the National Telecommunications and Information Administration (NTIA) proposed global policy agenda. Please find our comments entered into the proposed outline.

I. The Free Flow of Information and Jurisdiction

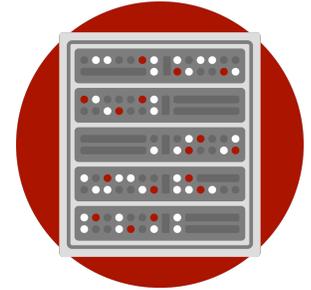
A. What are the challenges to the free flow of information online?

Restrictions to the free flow of information online are of significant concern to both the free and open Internet and the open markets on which they have found their greatest growth and success.

The free flow of information online is challenged by policies and technologies that restrict open access to information. These challenges come in several forms, including:

- Creating closed networks, e.g., state-mandated actions to wall content within a country, known as data localization, and fragmentation of the internet;
- Geography, e.g., slower access points in rural or underdeveloped areas;
- Language, e.g., limited options for non-English speakers; and
- Financial barriers, e.g., high costs for internet service, increasing paywalls for content access and educational limits.

These challenges can be addressed by focusing on bridging the “digital divide” and thoughtful technical and policy efforts on Universal Access.



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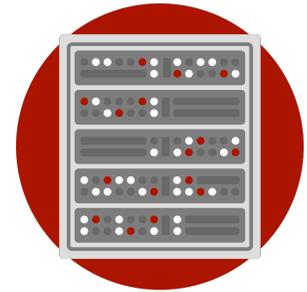
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The Freedom House *Freedom on the Net* study provides an insightful and comprehensive look at additional global challenges faced in the free flow of information. The latest report covers 65 countries. It focuses on obstacles to access, violations of human rights, and limits on content.



B. Which foreign laws and policies restrict the free flow of information online? What is the impact on U.S. companies and users in general?

From what we have observed, policies in non-democratic governments that require the removal of websites and content construed to be seditious or of a political nature; European laws on the removal of “hate speech”; intermediary liability laws and policies; copyright measures that require intrusive monitoring of user content or that impose a 'link tax' and encryption requirements in some EU and ASEAN nations are textually and operationally problematic. First, these laws often lack appropriate definitions of the content and/or behaviors they seek to restrict. This places the infrastructure owner in the place of deciding what ought to be removed and when, functionally usurping the legal trier of fact. Companies have to make a decision between risking losing customers or fines and other punishments from the government for making the “wrong” decision about content.



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Similarly, in jurisdictions that lack copyright limitations and exceptions like fair use or fair dealing, it may be difficult or impossible for U.S. firms to provide search features, artificial intelligence and machine learning technologies, computational analysis and text/data mining tools, and other cloud-based technologies.

Restrictions on Virtual Private Networks (VPNs) are rising. VPN technology is becoming increasingly important to address cybersecurity issues and business requirements. However, they are targeted by certain foreign governments with restrictions that we find inappropriate and discriminatory, in ways that directly negatively impact the businesses of companies within i2Coalition’s membership.

Data localization laws worldwide represent a significant challenge to U.S. companies, and a challenge to competitiveness for users, since they restrict businesses in specific regions from doing business in open markets, in favor of narrowly controlled, restricted and often non-competitive markets within those specific regions. An effective primer on the current status of data localization laws can be found [here](#).

Where national jurisdictions have different legal systems (for example the mix of common, civil and hybrid law jurisdictions in the EU and difference in common law between the UK and Australia), the legal requirements are not reconciled. Businesses without legal advisors with the capacity to deal with this innate conflicts of law will simply remove content to be “safe”. Those with such legal teams will pass the cost on to consumers. The end result is less content variety and possibly higher costs for consumers.

C. Have courts in other countries issued internet-related judgments that apply national laws to the global internet? What have been the practical effects on U.S. companies of such judgements? What have the effects been on users?

While monitoring case law from varying jurisdictions has not been a core area of focus for the i2Coalition, we do have an interest knowing about court decisions from several areas. Our member companies have interests or a presence in the United Kingdom, the European Union and parts of Asia. Going forward, we would appreciate engaging the NTIA on its perspectives on these issues as well as continuing our participation with international colleagues at IGF.

D. What are the challenges to freedom of expression online?

Lack of transparency around government access to data leads to chilling effects around freedom of expression online. In particular, lack of transparency around global surveillance programs leads directly to a lack of consumer confidence in the cloud, as individuals lack clarity about the privacy of their cloud based communications. Therefore, there are both free speech and commercial implications to this lack of transparency.

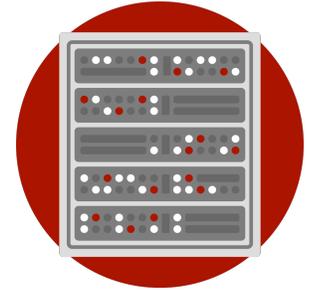
Fragmentation is another challenge to freedom of expression. By restricting access to information outside of a country or access to other information, citizens have limited ability to learn and share non-state sponsored news.

E. What should be the role of all stakeholders globally — governments, companies, technical experts, civil society and end users — in ensuring free expression online?

While this is not traditionally an area of focus for the i2Coalition, we are cognizant of the potential cascading effects restricting free expression could have on our members' lines of business. We monitor how our colleagues in these areas manage their roles, but take no position as to how they do so and we respect NTIA's work on the matter thus far.

F. What role can NTIA play in helping to reduce restrictions on the free flow of information over the internet and ensuring free expression online?

The NTIA as an agency is well positioned to understand the Internet ecosystem and its origins as a framework for the sharing of ideas and experimentation and innovation in a digital space. Keeping the Internet open has importance beyond the positions against restrictions on net neutrality. It is also about making sure new policies happen within the best jurisdictional frameworks with an eye on fact finding and transparent agency processes. If these things happen in concert with consistent stakeholder engagement, concerns about free expression will be addressed.



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G. In which international organizations or venues might NTIA most effectively advocate for the free flow of information and freedom of expression? What specific actions should NTIA and the U.S. Government take?

NTIA should continue its work with well-established multi stakeholder organizations, specifically the Internet Governance Forum (IGF) and ICANN.

H. How might NTIA better assist with jurisdictional challenges on the Internet?

NTIA should continue direct and regular communication with all all sectors of the internet industry. This ensures operational and commercial impacts are fully understood by policy makers, and the interests and viability of US businesses is considered.

II. Multistakeholder Approach to Internet Governance

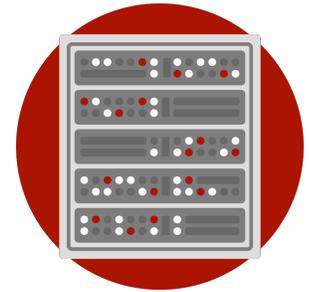
A. Does the multistakeholder approach continue to support an environment for the internet to grow and thrive? If so, why? If not, why not?

Yes. The multistakeholder approach to Internet governance and technical management has proven to be the best way to address the technical and policy issues facing the Internet globally. This model for governing the Internet has allowed for the Internet's unprecedented growth for more than 20 years. At its core, this model allows all stakeholders, including businesses, governments, civil society organizers, technical experts, and end users, to participate in Internet governance debates.

B. Are there public policy areas in which the multi-stakeholder approach works best? If yes, what are those areas and why? Are there areas in which the multistakeholder approach does not work effectively? If there are, what are those areas and why?

ICANN Is a strong multi-stakeholder success model. The governance structure is one that allows for participation and membership from variations sectors - commercial, government and civil society - to engage regardless of size and geography. Countries of all economic status can share opinions, commercial businesses without dominant market share can help shape policies, and nonprofits can advocate for connectivity. All of this is conducted in a constructive manner that does not disproportionately favor any one party.

While the i2Coalition has not done any in-depth study of other potential applications of multistakeholderism, we offer some general comments and concerns. We assume that our colleagues at NTIA are quite familiar with the IGF, WTO, WIPO and other such organizations and their policy missions. Therefore, one example of a policy area where the multistakeholder approach works, but is a departure from our usual focus, is defense policy, particularly at the international level. When considering a change in structure or the difficult decision to pursue aggression, the secretariat and its members are sure to go through a process of 1) respecting sovereign jurisdictions, 2) exploring the legal and practical ramifications of any collective action and 3) ensuring that members



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voices have equitable weight. The end result is traditionally a restrained, but collectively appropriate action.

On the other hand, there are other models, such as the international development, humanitarian and some collective trading systems in which not all stakeholders' participation is viewed in proportion to contributions and potential participation. The result is models that are limited, rather than multi-stakeholder frameworks. They suffer from a lack of innovation, collaborative decision making and restraint on major actions that these types of models are meant to provide. When considering multi-stakeholder models, we encourage NTIA to not just look at policy functions, but to pay close attention to decisional structures and the quality of outcomes those structures deliver.

C. Are the existing accountability structures within multistakeholder internet governance sufficient? If not, why not? What improvements can be made?

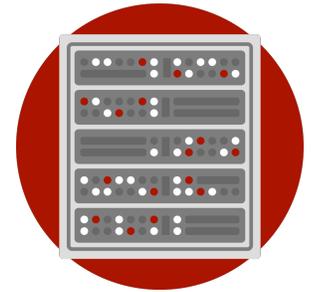
The IANA transition represented a opportunity to improve accountability and transparency within ICANN, and we actualized on that important opportunity. By NTIA making clear that the transition would not move forward if it was not accompanied by accountability improvements, it ensured that necessary improvements were made. We believe that the community-led, bottom-up process of determining what improvements were necessary and beneficial has strengthened ICANN and ensured that it continues to be responsive to stakeholders in the future. It has also provided an important example for governments and other stakeholders of the multistakeholder model at work.

D. Should the IANA Stewardship Transition be unwound? If yes, why and how? If not, why not?

The IANA transition should not be reversed or undone in any way. ICANN was specifically created by the U.S. Department of Commerce in 1998 to ensure that no one entity or sector, whether governments, academics, technologists, or businesses, controlled the evolution of the Internet. Rather, the U.S. Government wanted to ensure that any governance of the Internet was private-sector-led and multi-stakeholder in nature. Indeed, the NTIA noted in 1998 that it expected the IANA functions contract to sunset in a matter of years. By fully transitioning stewardship of the IANA functions to the global multistakeholder community, the NTIA provided the greatest support for the multistakeholder model possible. This should not be lost.

E. What should be NTIA's priorities within ICANN and the GAC?

We appreciate the NTIA's commitment to meet and communicate with the Internet industry on a host of important issues. The i2Coalition would like to highlight the importance of working together to encourage innovation and economic growth in the domain name industry. One way to achieve this is by ensuring there are balanced perspectives in the GAC. We'd like to see NTIA continue its educational work, but complement that with more attention to the structure and makeup of the groups.



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F. Are there any other DNS related activities NTIA should pursue? If yes, please describe.

i2Coalition has not fully explored other potential DNS related activities in which NTIA presence would be beneficial. It would be helpful to know about the NTIA's work or interest in working with the North American Network Operators Group (NANOG) or the Domain Names Systems Operations, Analysis, and Research Center (DNS-OARC).

G. Are there barriers to engagement at the IGF? If so, how can we lower these barriers?

IGF is a great opportunity to engage and would be even more so if participants can rely on it being a consistent avenue. Because of funding challenges, there is the perception that the event may not happen year to year. If there were a dedicated funding stream, this would not be an issue. The i2Coalition encourages the exploration of a dedicated funding stream.

H. Are there improvements that can be made to the IGF's structure, organization, planning processes, or intersessional work programs? If so, what are they?

i2Coalition has no specific IGF related guidance at this time.

I. What, if any, action can NTIA take to help raise awareness about the IGF and foster stakeholder engagement?

In addition to exploring a dedicated funding stream and ensuring events happen consistently, NTIA should also explore reaching out through other international fora such as the ones mentioned previously in this document.

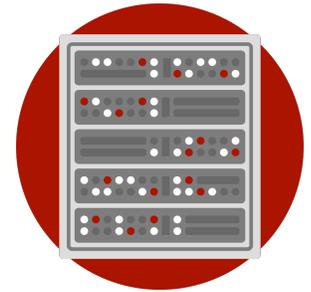
J. What role should multilateral organizations play in internet governance?

One of i2Coalition's core values is supporting a multi-stakeholder process for determining rules and regulations that gives key constituencies a voice in the internet governance process. We acknowledge that multilateral organizations are key constituencies who should have a voice in Internet governance. We do not believe that they should have a voice greater than other voices.

III. Privacy and Security

A. In what ways are cybersecurity threats harming international commerce? In what ways are the responses to those threats harming international commerce?

Cybersecurity threats, or more specifically uneven attempts to address them, harm industry by removing legal certainty and by at times requesting industry to alter or dilute the security of their products for intelligence or law enforcement purposes. With each branch of the U.S. Government pursuing parallel, but not necessarily equivalent cybersecurity (White House Policy, DHS Policy, Department of Commerce and SEC guidance) policies, it is difficult for industry to know where responsibilities lie. As mentioned, business runs on legal certainty. It would be



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helpful for the NTIA to engage its colleagues in the inter-agency process to help resolve some of this guidance.

The concept of weakening encryption to assist the intelligence and law enforcement communities is one that has and will be debated. For industry, weakening encryption for access only exposes end users to more vulnerabilities and opportunities for criminal intrusion. It will also increase the possibility of new threats and cyber crimes. In addition to making it harder for customers to rely on companies and harming commerce, it is actually a policy that will harm the cybersecurity community. It is a topic on which we hope to continue engaging.

B. Which international venues are the most appropriate to address questions of digital privacy? What privacy issues should NTIA prioritize in those international venues?

i2Coalition has no specific guidance at this time.

IV. Emerging Technologies and Trends

A. What emerging technologies and trends should be the focus of international policy discussions? Please provide specific examples.

While the i2Coalition has no specific guidance as to trends, we do ask to be included in policy discussions about emerging technology as those innovations will rely on Internet infrastructure in some manner. For example formulas, designs, and other proprietary information will need to be secured and stored. All idea and brand promotion websites will need to be registered somewhere with assurance they are in-line with current standards. Allow us to support innovators in early conversations.

B. In which international venues should conversations about emerging technology and trends take place? Which international venues are the most effective? Which are the least effective?

i2Coalition has no specific emerging technologies related guidance at this time.

C. What are the current best practices for promoting innovation and investment for emerging technologies? Are these best practices universal, or are they dependent upon a country's level of economic development? How should NTIA promote these best practices?

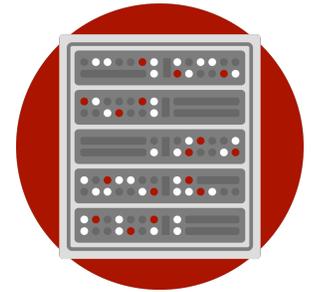
i2Coalition has no specific emerging technologies related guidance at this time.

In Conclusion

We appreciate the NTIA's continued efforts to understand the various voices of the Internet industry and their perspectives on public policy. The i2Coalition in particular has supported the decision to be true to the multi-stakeholder model of Internet governance via the IANA transition. We hope to continue working with the NTIA going forward.

Sincerely,

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